

IN THE MATTER OF	:	BEFORE THE
CARMAX AUTO	:	HOWARD COUNTY
SUPERSTORES, INC.,	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 07-005S

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DECISION AND ORDER

On August 6, 2007, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of CarMax Superstores, Inc., for a variance to erect a 61-square foot. 20-foot high, freestanding sign 30 feet from Baltimore National Pike/U.S. Route 40 ("Baltimore National Pike") instead of the requisite 61 feet required for the aggregate sign area and the 40-foot setback required in relation to the sign height, in a B-2 (Business: General) Zoning District, filed pursuant to Section 3.501.C of Subtitle 5 of Title 3 of the Howard County Code (the "Sign Code").

The Petitioners certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Mr. Sang Oh, Esquire, represented the Petitioner. Jo-Elsa Jordan and Robert Vogel testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The Petitioner is the Lessee of the subject property, which has an address of 8901 Executive Center Drive and is located in the 2nd Election District at the intersection of Executive Center Drive

and Baltimore National Pike in Ellicott City (the "Property"). The Property is referenced on Tax Map 24 as Parcel 848/H.

2. The 6.55-acre Property is irregular in shape. Executive Center Drive is the sole means of access to the Property.

3. The Property lies along a hilly section of Baltimore National Pike that climbs westward from a valley in the general area of Rogers Avenue/Courthouse Drive (the closest intersection) and peaks just beyond Ridge Road, the closest intersection to the Property's west. This topography causes the Property to sit at a higher elevation than other properties. The petition states the Property sits on the Pike's westbound section at a spot elevation about 20 feet above the roadbed.

4. Many power lines, utility poles, street signs, and deciduous and conifer trees run along the property lines adjacent to Baltimore National Pike, impeding the view of motorists traveling east and west.

5. There are many large commercial signs close to the area road frontage. At the northwest corner of Baltimore National Pike and Rogers Avenue is a Honda dealership with three illuminated signs. The largest is a monument sign about 20 feet high with the word "HONDA" in large letters at the top sited close to the property line. Across Rogers Avenue at the northeast intersection is an Infiniti dealership. It, too, has a monument sign near the intersecting property lines; however, it is not illuminated.

6. To the north and adjacent to the Property is a site zoned RA-15 (Residential: Apartment) and improved by two-story, single-family attached dwellings, which are generally situated at a higher elevation than the Property. The approximately 30 dwellings closest to the Property front on Kaiser Drive, which is accessed from Executive Center Drive, and after a curve runs somewhat parallel to

the rear Property line. Consequently, the dwellings' rear facades look directly down on the highly visible Property, while other properties along the Pike are less visible.

7. To the east is a site zoned B-2 and improved with a two-story building housing an Easy Method driving instruction business. To the south is a site zoned B-2 known as 8659 Ltd. Partnership and 8559 Baltimore National Pike. To the west is a site zoned B-2 improved by a BP/Amoco gasoline service station and known as 8720 Baltimore National Pike.

8. The Petitioner is requesting a variance under Section 3.501.C of the Sign Code to erect a 20-foot high, 61 square foot (4.66-foot (H) by 12.91-foot (W)), freestanding sign 30 feet from Baltimore National Pike/U.S. Route instead of the requisite 61 feet required for the aggregate sign area and the 40-foot setback required in relation to the sign height, in a B-2 (Business: General). The proposed sign will be a steel painted structure on two pylons, internally illuminated sign box containing the words "CarMax The Auto Superstore."¹ The proposed sign would be erected on the southeast corner of the Property just inside the 30-foot structure and use setback line.

9. Baltimore National Pike is a divided, minor arterial, non-local use highway with a posted speed limit of 45 MPH. A short distance from the Property are north and south access lanes to Route 29 and a ramp/access road to U.S. 70. Just before these lanes, Baltimore National Pike intersects with Ridge Road.

10. The Department of Inspections, Licenses & Permits technical staff report ("The DILP Report") states the Pike's excessive grade, together with the Easy Method building, landscaping, trees, and utility poles seriously interfere with visibility of the proposed sign at the required location.

11. Ms. Jo-Elsa Jordan, a sign consultant with Image Works, Inc., testified that she conducted a visibility study of the Property to determine the best location for a sign. She stated that she analyzed

both the east and westbound approaches to the site, examined the traffic pattern, and determined that a sign located 62 feet back from the setback would be barely visible due to the topography, the Easy Method building to the south and a stand of trees to the north. The study showed the sign without a variance would have to be located in a travel lane to be visible from between 180 and 200 yards away (the first points of visibility), that the sign would be barely visible, and that the best location for the sign is as proposed. She introduced the visibility study, the conditional site plan, photographs of the Property from the perspective of east and westbound motorists (Petitioner's Exhibits 1 and 2).

12. Robert Vogel, an engineer with Robert H. Vogel Engineering, testified to preparing the CarMax site development plan and reducing the site's elevation to increase visibility. As he stated, the nearby access lanes to Route 29 and U.S. 70 create a difficult traffic pattern in the area, as motorists must make quick lanes change to access the lanes. He also explained CarMax is a destination site attracting motorists who may not be familiar with the area. He noted that other car dealerships along Baltimore National Pike have large signs close to the road. He introduced a photograph showing the view from westbound traffic (Exhibit 3). In Mr. Vogel's opinion, the sign's proposed location reduces the possibility of a traffic hazard by signaling motorists to any necessary lane changes at a safe distance from Executive Center Drive.

CONCLUSIONS OF LAW

Section 3.513(b) of the Sign Code permits the Board of Appeals to grant variances from the provisions of the Sign Code where certain determinations are made. Based upon the foregoing Findings of Fact, I conclude as follows:

1. That there are unique physical conditions or exceptional topographical conditions peculiar to the property on which the proposed sign is to be located, including the location of

¹ The petition included two alternative sign designs, the preferred pylon sign and a monument sign.

existing buildings and other structures, irregularity, narrowness or shallowness of the lot, irregularity of the road right-of-way, location on a highway that has a dependency on nonlocal use, which conditions lead to practical difficulty and unnecessary hardship in complying strictly with the provisions of this subtitle.

The Property is elevated about 20 feet from the westbound roadbed of Baltimore National Pike, a non-local divided highway. I conclude the Property's elevation from the roadbed is an exceptional topographical condition peculiar to the property. This condition, together with the nonlocal nature of the highway, leads to practical difficulty and unnecessary hardship in complying strictly with the setback requirements of the Sign Code, in accordance with Section 3.513(b)(1).

2. Or, that there are obstructions, such as excessive grade, building interference, structures or landscaping on abutting property or properties which seriously interfere with the visibility of a proposed sign, resulting in practical difficulties and unnecessary hardship in complying strictly with the provisions of this subtitle.

The Easy Method building to the east, the tree grove to the west, utility lines running along property lines, and the grade of Baltimore National Pike relative to the Property seriously interfere with the visibility of a conforming sign. These conditions therefore represent obstructions which seriously interfere with the visibility of the proposed sign, resulting in practical difficulties and unnecessary hardship in complying strictly with the setback requirements of the Sign Code, in accordance with Section 3.513(b)(2).

3. Or, that there are historical, architectural, or aesthetic characteristics which shall be considered.

There are no historical, architectural or aesthetic characteristics of the Property to be considered under section 3.513(b)(3).

4. That the variance, if granted, will not adversely affect the appropriate use or development of adjacent properties, nor result in a dangerous traffic condition.

A. Adverse Affect on the Appropriate Use or Development of Adjacent Properties.

The proposed sign will be generally separated from vicinal commercial properties. However, the Property is separated from the adjoining residential development by only a parking lot and the rear facades of the some 30 attached dwellings closest to the Property will have an immediate and direct view of the proposed sign. In my view, a non-illuminated sign would not adversely affect the appropriate use of adjacent residential use. An illuminated sign, however, would adversely affect the resident's use of their homes and rear yards in the twilight and evening hours and it could potentially cause a dangerous traffic situation at night if the illuminated sign interferes with the residents' ingress and egress to their homes through Executive Center Drive. I therefore conclude an illuminated sign would adversely affect the appropriate use or development of adjacent properties, but that a non-illuminated sign would not.

B. Dangerous Traffic Conditions

The Property lies along a section of Baltimore National Pike where motorists must make quick decisions to move into the appropriate lane to continue along the Pike or access Route 29 or U.S. 70. To be readily identified by both eastbound and westbound motorists traveling at the posted speed limit in sufficient time to make safe turning movements, the sign must be erected at its proposed location. Unlike the location of a complying sign, which owing to its lack of visibility could increase traffic problems, the proposed location will modulate area traffic conditions. As to the Petitioner's need for an illuminated sign for traffic safety, none of the evidence and testimony before me addressed such a need. Based on the testimony and evidence, and with respect to the above discussion and conclusions about an illuminated sign, I conclude that the requested sign, if

not illuminated, would at its proposed location and as otherwise designed to comply with these findings and conclusions, will not create a dangerous traffic condition as required by Section 3.513(b)(4).

5. That the requested variance is the minimum necessary to afford relief, and can be granted without substantial impairment of the intent, purpose and integrity of this subtitle.

The requested variance for an illuminated sign at the proposed location is not the minimum necessary to afford relief. However, an non-illuminated sign at the proposed location is the minimum necessary and can be granted without substantial impairment of the intent, purpose and integrity of the Sign Code, in accordance with Section 3.513(b)(5).

6. That such practical difficulties or hardships have not been created by the applicant; provided, however, that where required findings pursuant to section 3.513 are made, the purchase or lease of the property on which a proposed sign is to be located subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The practical difficulties are a result of unique topographical conditions, vicinal obstructions, and highway conditions. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(6).

ORDER

Based upon the foregoing, it is this 31st day of August 2007, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of CarMax Superstores, Inc., for a variance to erect a 61-square foot. 20-foot high, freestanding sign 30 feet from Baltimore National Pike instead of the requisite 61 feet required for the aggregate sign area and the 40-foot setback required in relation to the sign height, in a B-2 Zoning District, is hereby **GRANTED;**

Provided, however, that the variance will apply only to the uses and structures as described in the petition and plan submitted, as amended, and not to any other activities, uses, structures, or additions on the Property, and subject to the following condition:

1. The sign shall not be illuminated.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

MICHELE L. LEFAIVRE
Michele L. LeFaivre

Date Mailed: 9/5/07

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.